

UNITED STATES DISTRICT COURT

FOR THE EASTERN DISTRICT OF CALIFORNIA

THELMEAS WALKER, JR.,

No. 2:16-cv-0047-EFB P

Petitioner,

ORDER

JEFFREY BEARD, et al.,

Respondents.

Petitioner, a state prisoner without counsel, filed a motion for an extension of time without filing a petition for writ of habeas corpus. The filing does not provide any specifics regarding petitioner's state conviction or contain any claims for relief.

To commence a civil action, a party is required to file a complaint or petition. Fed. R. Civ. P. 3; Rule 3, Rules Governing § 2254 Cases; *Woodford v. Garceau*, 538 U.S. 202, 203 (2003). Petitioner's filing constitutes neither. As petitioner has failed to properly commence this action, the court may not properly rule on his motion for an extension of time. *See Delarm v. McDonald*, No. Civ-S-11-0750-CKD P, 2011 WL 6012346, *2 n.6 (E.D. Cal. Dec. 1, 2011) ("filing a request for an extension of time to file a § 2254 habeas petition before the petition has actually been filed is not proper as there is no § 2254 action until the petition has been filed . . .").

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1 Petitioner is warned that his filing does not act as a protective petition for purposes of the
2 Anti-Terrorism and Effective Death Penalty Act of 1996's one-year statute of limitation. If
3 petitioner wishes to proceed with this case, he must file a petition. In addition, petitioner must
4 either file an in forma pauperis affidavit or pay the required filing fee (\$5.00). *See* 28 U.S.C.
5 §§ 1914(a); 1915(a).

6 Accordingly, it is hereby ORDERED that:

7 1. The Clerk of the Court shall send to petitioner the court's forms for application for writ
8 of habeas corpus and application for leave to proceed in forma pauperis.

9 2. Within 30 days of the date of this order, petitioner shall either pay the \$5 filing fee or
10 submit a complete application for leave to proceed in forma pauperis.

11 3. Within 30 days of the date of this order, petitioner shall file a petition for writ of
12 habeas corpus.

13 4. Failure to comply with this order may result in this case being closed.

14 DATED: January 13, 2016.

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16 EDMUND F. BRENNAN
17 UNITED STATES MAGISTRATE JUDGE
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